IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 2202 of 2006

Date of Decision: 20.11.2006

Yogesh Sood & Anr. ...Petitioners

Vs.

Parmodh Kumar Jain & Anr. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Sandeep Bansal, Advocate,
for the petitioners.

Mr.Deepak Arora,Advocate,
for respondent No.1.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against an order vide which application moved by the petitioner for the appointment of Court Guardian of petitioner No.1 has been declined. Learned Court below while declining the application has observed as under:

> " I have heard the arguments advanced by the learned counsel for the parties and carefully gone through the ruling cited by the learned counsel for the petitioners 1983, TPLR, 69 (Supra) wherein the application for appointment of court guardian was allowed by the court and the order was upheld by the Hon'ble High Court but this ruling is not applicable to

> the facts of the present case as the present petition has been filed by Yogesh Sood and Vishal Sood on 7.3.2001 and on 4.12.2001 Yogesh Sood appeared as AW 1 and his examination-in-chief was recorded and cross-examination was deferred on the request of the learned counsel for the respondents but thereafter he appeared for cross-examination on 16.9.2004 it was observed by the court that this witness could not properly replied as he could not properly speak to make the court understand what he says and then the witness was discharged for that day and cross-examination was deferred. The petitioner has placed on record one photocopy of disability certificate issued by the Civil Surgeon, Hoshiarpur, but that certificate pertains to 14.2.2000 i.e. much prior to the filing of petition. No other document has been produced on record by the petitioners to prove that the petitioner No.1 is actually unable to speak properly, therefore, in this view of the circumstances, I do not find any merit in the application, hence the same is hereby dismissed."

The reading of the order shows that Yogesh Sood AW1 was not capable of giving proper answer as he was not in a position to speak properly. In support of this medical disability a certificate dated 14.2.2000 was also produced which was rejected merely on the ground that it was an old certificate and no new material has been placed on record in support thereof. This cannot be accepted in view of the finding recorded that AW 1 when he appeared in court could not speak properly.

In view of this, the impugned order cannot be sustained and accordingly the same is set aside. The revision petition is allowed. The application moved by the petitioner stands allowed.

(Vinod K.Sharma)
Judge

20.11.2006
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